

Internal Revenue Service

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Department of the Treasury

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Third Party Communication: None

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CC:CORP:B04

PLR-153798-08

Date:

February 20, 2009

Legend

Distributing =

SMLLC =

Controlled =

Parent =

Business A =

Business B =

Business =

C

Country A =

State A =

State B =

Date1 =

Year 1 =

Dear :

This letter responds to your December 19, 2008 request for rulings on certain Federal income tax consequences of a series of proposed transactions (the "Proposed Transaction"). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code, as amended (the "Code") and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Summary of Facts

Parent, a publicly traded, Country A Corporation, wholly owns Distributing, a State A corporation, and Distributing wholly owns SMLLC, a State B single member limited liability company that is disregarded as separate from its owner for Federal income tax purposes under § 301.7701-3 of the Procedure and Administration Regulations (a "disregarded entity").

Parent conducts Business A, Business B, and Business C through its international subsidiaries, which include Distributing (collectively, the "Parent Group"). Distributing directly conducts Business A and indirectly conducts Business B through SMLLC.

The financial information submitted by Distributing indicates that Business A (conducted by Distributing) and Business B (conducted by SMLLC) each have had gross receipts and operating expenses representing the active conduct of a trade or

business for each of the past five years.

Although Business A and Business B operate within the same industry and are conducted by the same management team, they differ substantially in a number of respects. These differences have resulted in a variety of systemic problems, including competition for management time and financial resources, and delays and confusion in communication between Business B and Parent. To eliminate these systemic problems and thereby enhance the success of both Business A and Business B, the management of Parent and Distributing has decided to restructure the Parent Group so that the entity conducting Business B is controlled directly by Parent (the “Restructuring”).

Proposed Transaction

To effect the Restructuring, Distributing proposes the following steps (the “Proposed Transaction”):

- (i) SMLLC will convert to a State B corporation (“Controlled”), and all of the Controlled stock will be issued to Distributing (the “Contribution”).
- (ii) Distributing will distribute the Controlled stock to Parent in exchange for a portion of the Distributing stock now held by Parent (the “Distribution”).
- (iii) Distributing will retire all of the Distributing stock surrendered by Parent in the Distribution.

In connection with the Proposed Transaction, Distributing and Controlled will enter into various agreements relating to the separation of Business B from Business A. These will include an agreement under which Controlled will continue to sell certain of its products to Distributing at negotiated prices (the “Intercompany Sales Agreement”); an agreement under which the Controlled employees will continue to participate in the Distributing § 401(k) Savings and Investment Plan (the “Employee Plan Agreement”); and an agreement under which (i) Distributing and Controlled will share the services of the Parent Group general counsel and (ii) the Distributing president will serve as vice-chairman of the Controlled board of directors (the “Services Agreement,” and together with the Intercompany Sales Agreement and the Employee Plan Agreement, the “Continuing Relationships”). Under the Services Agreement, Distributing will pay the salaries of the General Counsel and Distributing President/Controlled Vice Chairman, and Controlled will reimburse Distributing for these services at an amount that approximates fair market value.

Representations

Distributing makes the following representations regarding the Proposed Transaction:

- (a) Any indebtedness owed by Controlled (or any entity controlled directly or indirectly by Controlled) to Distributing (or any entity controlled directly or indirectly by Distributing) after the Distribution will not constitute stock or securities.
- (b) The fair market value of the Controlled stock received by Parent will approximately equal the fair market value of the Distributing stock surrendered.
- (c) No part of the consideration distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (d) The five years of financial information submitted on behalf of Business A conducted by Distributing is representative of its present operations, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business B that will be conducted by Controlled immediately after the Distribution is representative of its present operations, and with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Neither Business A conducted by Distributing nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed Treas. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Distribution, Distributing will have been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution.
- (g) Neither Business B that will be contributed to Controlled nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed Treas. Reg. § 1.355-3) in whole or in part. From the time of its conversion to a limited liability company in Year 1 until the Contribution, SMLLC will have been the principal owner of the goodwill and significant assets of Business B. Following the Contribution, Controlled will be the principal owner of the goodwill and significant assets of Business B.

- (h) Apart from the Continuing Relationships, Distributing will continue the active conduct of Business A, independently and with its separate employees.
- (i) Apart from the Continuing Relationships, Controlled will continue the active conduct of Business B, independently and with its separate employees.
- (j) The Distribution will be carried out to enhance the success of Distributing and Controlled by eliminating systemic differences resulting from the current structural relationship of Business A and Business B and by aligning the strategic vision of Controlled with Parent. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.
- (k) The Distribution will not be used principally as a device for the distribution of earnings and profits of Distributing or Controlled or both.
- (l) The total adjusted basis and fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (m) Any liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (n) No investment tax credit determined under § 46 has been, or will be, claimed with respect to any property that will be transferred by Distributing to Controlled in the Contribution.
- (o) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

- (p) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- (r) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (s) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50 percent or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled, (2) if any person holds a 50 percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (t) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or after, the Distribution, other than intercompany loans or obligations that have arisen, or will arise, between the parties in the ordinary course of business.
- (u) With the possible exception of (i) payments for certain products to be manufactured by Controlled and marketed by Distributing and (ii)

payments for services rendered to Controlled by the General Counsel and the Distributing President, payments made in connection with all continuing transactions between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

- (v) No two parties to the Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (w) Distributing is not and has not been a U.S. real property holding corporation ("USRPHC") at any time during the five-year period ending on Date 1. Further, Distributing does not expect that it will become a USRPHC at any time between Date 1 and the date that the transfer that is the subject of this ruling request occurs.
- (x) Prior to the Distribution, Parent will request and Distributing will provide to Parent in accordance with Treas. Reg. § 1.897-2(h), a statement signed under penalties of perjury establishing that the stock of Distributing is not a U.S. real property interest on the date of the transfer. In addition, Distributing will file a notice with the IRS of its determination, along with a copy of the statement provided to Parent, within 30 days of providing the statement to Parent in accordance with Treas. Reg. § 1.897-2(h).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" under § 368(b).
- (2) No gain or loss will be recognized by Distributing on the Contribution (§§ 361(a) and 357(b)).
- (3) No gain or loss will be recognized by Controlled on the Contribution (§ 1032(a)).
- (4) The basis of each asset received by Controlled in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (5) The holding period of each asset received by Controlled in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

- (6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).
- (7) No gain or loss will be recognized by (and no amount will be included in the income of) Parent upon its receipt of the Controlled stock in the Distribution (§ 355(a)(1)).
- (8) The aggregate basis of the Distributing stock and the Controlled stock in the hands of Parent immediately after the Distribution will equal the aggregate basis of the Distributing stock held by Parent immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each immediately following the Distribution, in accordance with Treas. Reg. § 1.358-2(a)(2) (§ 358(a), (b), and (c)).
- (9) The holding period of the Controlled stock received by Parent in the Distribution will include the holding period of the Distributing stock on which the Distribution is made, provided such stock is held as a capital asset by Parent on the date of the Distribution (§ 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and Treas. Reg. § 1.312-10(a).
- (11) Distributing will not recognize gain or loss under § 367(e)(1) on the Distribution (§ 1.367(e)-1(c)).

Caveats

No opinion is expressed about the Federal income tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the Federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both; and
- (iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).
- (iv) The potential application of § 482 to any payments between Distributing and Controlled for products or services that are not for fair

market value based on terms and conditions arrived at by the parties bargaining at arm's length.

Procedural Matters

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to the Federal income tax return of each party involved in the Proposed Transaction for the taxable year in which the Proposed Transaction is completed. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their returns that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Associate Chief Counsel (Corporate)